DOCUMENT RESUME

ED 119 281 CS 501 269

AUTHOR Haiman, Franklyn S.
TITLE Freedom of Speech as an Academic Discipline.
PUB DATE Apr 76
NOTE 14p.; Paper presented at the Annual Meeting of the Southern Speech Communication Association (San Antonio, Texas, April, 1976)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage
DESCRIPTORS Analytical Criticism; Case Studies; *Civil Liberties; *Communication (Thought Transfer); *Freedom of Speech; Higher Education; Historical Criticism; Political Issues; *Research; Theoretical Criticism
IDENTIFIERS SCA Committee on Freedom of Speech; *Speech Communication Association

ABSTRACT

Since its formation, the Speech Communication Association's Committee on Freedom of Speech has played a critical leadership role in course offerings, research efforts, and regional activities in freedom of speech. Areas in which research has been done and in which further research should be carried out include: historical-critical research, in which an outstanding model is Leonard Levy's "Legacy of Suppression: Freedom of Speech and Press in American History"; case or field studies, such as the studies of the Rap Brown speech in Cambridge, Maryland, in the summer of 1967; empirical and experimental studies on communication effects, such as those on obscenity or the impact of violence on radio and television programs; and critical analyses and theory development, which involve the most difficult and most important scholarship and for which twelve specific issues are ready for perusal. (JM)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL HAS BEEN GRANTED BY

Franklyn S. Haiman

TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

ED119281

FREEDOM OF SPEECH AS AN ACADEMIC DISCIPLINE

Franklyn S. Haiman

Paper prepared for presentation to the Southern Speech Communication Association Convention, San Antonio, Texas, April 9, 1976.

It was just a little over fifteen years ago that a group of about a dozen refugees from the labors of a long day at a Speech Association of America convention gathered over beers at a St. Louis coffeehouse to commiserate with one another about the state of our profession. It was an all-male group, I'm sorry to say; just one of the many indices of how far we've come in the intervening years.

Our topic of primary concern was that practically nobody in the field of speech was paying any attention, in their research or their teaching, to what seemed to us to be one of the basic premises on which the existence of our discipline depended -- the maintenance of a system of freedom of expression. To be sure, most of us gathered around that table were card-carrying members of the American Civil Liberties Union and knew the names of a few important First Amendment giants like Alexander Meiklejohn, Zechariah Chafee, and Roger Baldwin, and a few significant First Amendment cases such as Schenck, Terminiello, and Dennis. We knew that James M. O'Neill, a founding father of the modern field of speech, had been for many years one of a tiny handful of prominent Roman Catholics who saw fit, in those monolithic days of the church, to identify himself with the ACLU, working actively on a national committee of that organization. We knew about Jacobus Ten Broek, a non-speech trained lawyer who then headed the off-beat department of speech at the University of California at Berkeley, who had taught a course in freedom of speech at the school for some time. We knew, also, of the interest and

CS 501 269

work in this area of Robert M. O'Neil, then a recent Harvard Law School graduate and Tufts debate coach, now Vice-President of Indiana University, who devised an experimental free speech Summer course offering for the San Francisco State College speech department. Stimulated in part by Bob O'Neil's initiative, I had begun plans for a similar course offering on a regular basis at Northwestern, which was approved by the Graduate School Curriculum Committee over the objections of an English professor and a biologist, but with the support of the Political Science Department's Professor of Constitutional Law and of faculty members in the School of Law.

Out of that St. Louis coffeehouse meeting came a resolve to "get something going" by way of a structure within the Speech Association of America to encourage and support teaching and research in freedom of speech. Petitions were drawn up for the creation of an official Interest Group within the association, and that action had some interesting consequences. Several members of the association's leadership group thought some kind of un-American activity was getting under way, and it was over considerable opposition of that sort that initial approval was won. It did not help matters any when one of the panelists on the first convention program we sponsored chose to exercise his free speech by describing his perceptions of how one of our major Ph.D.-producing university speech departments -- identified by the name of the institution and of the speaker's major professor -- had rejected his work allegedly because of disagreement with his liberal political views. I recall vividly the cloak and dagger drama that played itself out in the hallways and rooms of the Hotel Cleveland that day as Alvin Goldberg, who had chaired this momentous program for us, fought to retain possession of the tape which had been made of the speech in question, while other interested parties sought to commandeer it.

Well, that all seems like ancient history now. We finally received official status, not as an Interest Group but as an all-association Committee on Freedom of Speech. The motivation which led some of the organization's officers to favor this kind of structure -- so that a closer eye could be kept on us by the Establishment -- was masked by the quite valid argument that freedom of speech concerns cut across all of the association's Interest Groups and thus required this horizontal, rather than vertical, mode of organization. When the suspicions about us gradually faded away, we were left with a status that actually enhanced our ability to function visibly and effectively in professional affairs. With a sympathetic association Executive Director, a growing respect for the excitement and quality of the convention programming we scheduled, the staying power of our newsletter, and the usefulness of our yearbook, it was not long before our position in the association was secure and valued. We authored a revised "Credo" for the national organization and prepared testimony for submission at Congressional committee hearings. But most important, we played a critical role of leadership in the widespread development over the next dozen years of course offerings, research efforts, and regional activities in freedom of speech. Just last year the very active Free Speech section of the Western Speech Association launched a newsletter of its own, and today we inaugurate a new Division within the Southern Speech Association.

So much for the politics of the study of freedom of speech as a communication-oriented discipline. I take it that our primary business here today is to talk substance; to discuss the kinds of contributions that have been made, can be made, and should be made by our field to a better understanding of the problems of freedom of expression in

contemporary society.

As with almost every problem area that has been addressed by scholars in speech communication, one is confronted at the outset with some jurisdictional questions. What do we have to offer,;for which we are qualified, that is unique and that differs from what lawyers, political scientists, or sociologists and philosophers of the law may do? The answer to those questions, I'm afraid, is no more definitive than it is to the jurisdictional questions we have confronted with respect to persuasion and social movement research, interpersonal communication, small group behavior, and almost everything else we have done. Hopefully we approach all of these areas with a perspective that is informed by an understanding of symbolic transactions that persons not trained in our field simply do not have. Hopefully, also, no one of us will venture far into any of these areas without the necessary preparation that related disciplines provide. I'm not sure whether a would-be scholar of freedom of speech is much worse off without sufficient legal background than is a would-be scholar of interpersonal communication with insufficient knowledge of psychology, but it does seem that such weaknesses are more readily apparent and more immediately disabling in the freedom of speech area.

Passing on from the jurisdictional questions with those general, and not very helpful, observations, let us turn to an examination of some of the kinds of research that have been done in freedom of speech which are, in my judgment, most suggestive of areas in which further work is needed and in which speech communication scholars may be able to play a useful role. I do not plan to deal here with our teaching role, for that would require more time than is available. In any event, that role ought to be guided by the sort of research we do.

Historical-Critical Research

Whenever I want to expose a graduate student to my ideal in the way of historical-critical research, no matter what the topical area, I can find no better model than Leonard Levy's Legacy of Suppression: Freedom of Speech and Press in American History.[1] To me this book is historical scholarship at its finest and its most influential. Finding and pulling together original source materials that had not been utilized before, Levy, a historian by training, propounded and persuasively demonstrated the thesis that our Founding Fathers had no such absolutist notions about freedom of speech as Justice Hugo Black had always attributed to them, nor did they intend "to wipe out the common law of sedition," as Zechariah Chafee had so authoritatively maintained.[2] Levy's revisionism was not calculated to undermine contemporary absolutist interpretations of the First Amendment, nor has it had that effect. His purpose was only to set the record straight concerning the roots from which we have grown, and that he has done with unchallenged success.

I do not expect every speech communication scholar who turns a hand to historical explorations in freedom of speech to produce a Legacy of Suppression. But there are many more modest contributions that can be made to our understanding of the system of freedom of expression through historical-critical scholarship. We have had a few such pieces appearing in our journals and in the Free Speech Yearbook from time to time, and there has been at least one excellent doctoral dissertation with which I am familiar, by Walter Terris, entitled The Right to Speak: Massachusetts, 1628-1685.[3]

Case or Field Studies

Contemporary controversies over freedom of speech are a rich, exciting, and never-ending source of data about the dynamics of intolerance, repression, and resistance, and, when carefully analyzed, provide fresh insights that can help shape wiser social policy and judicial doctrine. Prime examples are the studies that were done of the famous Rap Brown speech in Cambridge, Maryland, in the Summer of 1967, which was followed by rioting and the burning of a school, and ultimately led to the passage by Congress of the so-called Rap Brown, or Anti-Riot, Amendment to the Civil Rights Act of 1968, under which the Chicago Seven Conspiracy case was prosecuted. Two studies of that incident of which I have knowledge provide provocative food for thought about our laws on incitement to riot. One of them, by a pair of speech communication scholars, Patrick Kennicott and Wayne Page, appeared in the Quarterly Journal of Speech in 1971.[4] The other, a more extensive and well-financed study in the field, done by a research team of social scientists for the National Advisory Commission on Civil Disorders, was so hot to handle that it came to public attention only because the 35-page report was stolen from the Commission's files and leaked to the New York Times.[5]

Empirical and Experimental Studies on Communication Effects

In 1970, as you may remember, a national Commission on Obscenity and Pornography, which had been established by Congress and appointed by President Lyndon Johnson, recommended the abolition of all laws prohibiting the distribution of so-called obscene material to consenting adults. That recommendation was based in large part

upon an extensive compilation of empirical and experimental research leading to the conclusion that there was "no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behavior among youth or adults."[6] The Commission's recommendations were described by then-President Richard Nixon as"morally bankrupt,"[7] and three years later his four appointees to the U.S. Supreme Court, joined by Justice Byron "Whizzer" White, followed his lead on the subject. Said Chief Justice Warren Burger, speaking for the five-man majority:

> "Although there is no conclusive proof of a connection between antisocial behavior and obscene material, the legislature of Georgia could quite reasonably determine that such a connection does or might exist. . . .From the beginning of civilized societies, legislators and judges have acted on various unprovable assumptions. Such assumptions underlie much lawful state regulation. . . ."[8]

Despite this bit of know-nothingness on the part of the Supreme Court majority, those less ideolgically bound were significantly influenced by the Commission's findings,and I assume that it is only a matter of time until their views prevail. Justice William Brennan, for example, who authored the Supreme Court's opinion first declaring obscenity beyond the protection of the First Amendment, has been persuaded to change his mind and,, along with former Justice Douglas, and Justices Marshall, and Stewart, now believes that all prohibitions on obscenity directed to consenting adults violate the First Amendment.[9]

Another area in which empirical and experimental studies are beginning to have a significant ~~impact~~ influence on our thinking about freedom of speech is that of the impact of movie and television violence on

social behavior. As I assume you are aware, some evidence is accumulating that a steady diet of filmed violence may induce higher levels of aggressive behavior on the part of viewers,[10] and a few tentative steps have been taken by the Federal Communications Commission[11] and some city councils[12] to address the problem. Certainly specialists in communication should be making some contribution to the debates which I assume lie ahead of us on this question. Without more data, I, for one, do not know for sure which side of that debate I am likely to be on, although my inclination is to oppose restrictions on communication even in the face of evidence of some relationship between that communication and anti-social behavior. The comples of variables that accounts for anti-social conduct is far too intricate a web for me to be content with remedies directed to just one of the strands.

Attitude Research

The attitudes which members of the public bring to free speech questions, and the personality structures associated with those attitudes, may not be relevant to the development of theories about how things ought to be in a system of freedom of expression, but they certainly are critical in determining what it is politically feasible to accomplish. For that reason, survey research on attitudes toward freedom of speech issues can be immensely useful. Alton Barbour of the University of Denver Speech Communication Department, and current editor of the Free Speech Yearbook, did his doctoral dissertation in this area and has continued an active interest in it. I gained what I felt to be considerable enlightenment through a four-month survey research project I conducted in Denmark a few years ago on attitudes toward a variety of free speech questions.[13] William Gorden, of the Speech Department at Kent State University, has done a considerable amount of work with the free speech attitudes of students.

I might note in this connection that the Report of the Commission on Obscenity and Pornography frankly admitted that its recommendation

for the continuation of controls on obscene material directed to children was based, not on its own best judgment, but on public opinion polls which seemed to indicate that this is what an overwhelming majority of parents in the United States want.

Critical Analyses and Theory Development

I have saved for the last what I regard as the most difficult and most important scholarship in which we can engage with respect to freedom of speech. I refer to critical analyses and evaluations of presently prevailing free speech doctrines and theories with a view to their refinement and improvement. This task,as I see it, involves two steps: (1)to discover and describe the way that our courts, and the public for whom they act as surrogates, perceive, define, evaluate and control -- legally or extra-legally -- the various kinds of communication transactions that occur in our society; and (2) to examine the accuracy of those perceptions, the adequacy of those definitions, the validity of those evaluations, and the legitimacy of those controls. To put the matter another way, the task is to test the evidence and reasoning upon which the conventional wisdom of public and courts is based, using whatever skills we may possess because of our presumed expertise in understanding the communication process.

The reason I place so high a priority for us on this activity is that so little has been done along these lines by anybody other than lawyers and law professors; and although some of their work has been brilliant, too many of them suffer from the narrow vision that legal training and experience have a tendency to cultivate. The occasional brilliant examples that lawyers have produced can provide us with models and inspiration. I am thinking of such works as Jerome

Barron's famous Harvard Law Review article on "Access to the Press -- A New First Amendment Right,"[14] Martin Redish's "The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression,"[15] and the Columbia Law Review's piece on "Symbolic Conduct."[16] At the more ambitious level of general theory there is, of course, Thomas Emerson's exposition of his "full protection theory" in his book, The System of Freedom of Expression.[17]

I can tell you from the personal experience of trying my own hand at this kind of research and writing, in a Northwestern University Law Review article entitled, "Speech v. Privacy: Is There a Right Not to be Spoken To?",[18] that the challenge is great, the work is hard, but the rewards are immensely satisfying. When I picked up the U.S. Supreme Court's decision handed down [redacted] last June, in the case of a drive-in movie in Jacksonville, Florida, that had been prosecuted for thrusting unwanted communication on passersby who could see the screen from outside the fence, and I discovered without any forewarning that the Court, in overturning that conviction, had prominently cited and apparently relied upon the thesis put forth in my article,[19] I knew that it had been worth the effort, and that students of communication can have an influence on First Amendment law.

There are many free speech issues that are now ripe for critical analysis and the development of more adequate theory. In closing let me list a few of them on which speech communication scholars ought to have something helpful to say:

1. The law of incitement -- To what extent, if any, should communicators be held legally responsible for the actions of an audience?

2. The problem of heckling -- At what point does permissible heckling become prohibitable disruption? Should distinctions on this question be made between open-air meetings and gatherings that are held inside of rented public facilities?

3. Should groups that assemble in rented public meeting rooms have the right to entirely exclude unwanted auditors from their meeting?

4. Residential picketing -- Should the environs of private residences be placed outside the bounds of the public forum?

5. Commercial speech -- Can a valid rationale be found for the regulation of false or misleading statements about products and services in the absence of such controls on other kinds of speech? What is and what is not commercial speech?

6. The law of libel and of invasion of privacy -- Does the possibility of being sued for defamation or invasion of privacy exert an unduly chilling effect on freedom of speech? Are less inhibiting remedies available?

7. To what, if any, extent should the free expression of personal political, social or religious views by public school teachers and administrators be curbed in contexts where their audience is captive to them?

8. How can we distinguish between nonverbal behavior which is communication that should be protected by the First Amendment and that which is conduct more properly subject to legislative control?

9. Should "group libel" (or incitement to racial and ethnic hatred) be outside the protection of the First Amendment, as it is in many other democratic nations?

10. What is the balance that should be struck between a communicator's right to anonymity, in the interest of being able to speak freely without fear of retribution, and the public's right to know the source of a communication, in the interest of making a more complete evaluation of its merit?

11. Are limitations on campaign contributions and expenditures a necessary and justifiable intrusion into the exercise of free speech rights?

12. Should some degree of direct public access to the mass media of communication be compelled by law?

If the speech communication discipline, through historical, experimental, descriptive, or critical research, can influence First Amendment law on any of these questions, we will have amply justified our entry into the field.

Notes

1. Harvard University Press, 1960.

2. Free Speech in the United States (Harvard University Press, 1948), p. 21.

3. The Right to Speak: Massachusetts, 1628-1685, Unpublished dissertation, Northwestern University, 1962.

4. "H. Rap Brown: The Cambridge Incident," Quarterly Journal of Speech, October, 1971, pp. 325-34.

5. New York Times, March 6, 1968, and Letter to the author from Robert Shellow, Advisor to the Director of Public Safety, District of Columbia, May 14, 1968.

6. Report of the Commission on Obscenity and Pornography (Bantam Books, 1970), p. 32.

See, for example, "Baptist Preaching from Virginia Jails, 1768-1778, Southern Speech Journal, Winter, 1964; "Repression in Great Britain, 1792-95," Free Speech Yearbook, 1975; and "John Haynes Holmes and Freedom within the Church," Free Speech Yearbook, 1967;

7. New York Times, October 25, 1970, p. 71.

8. Paris Adult Theatre v. Slaton, 413 U.S. 49 (1973).

9. Ibid.

10. George Comstock, "The Effects of Television on Children and Adolescents -- The Evidence So Far," Journal of Communication, Autumn, 1975, pp. 25-34.

11. Report to Congress on the Broadcasting of Violent, Indecent and Obscene Material, Federal Communications Commission, February 19, 1975.

12. Chicago Sun-Times, February 3, 1973, p.1.

13. "Danish Attitudes Toward Freedom of Expression," Sociologiske Meddelelser, A Danish Sociological Journal, 1970, pp. 21-57; Reprinted as a monograph of the Northwestern University Center for Urban Affairs under the title, "The Effect of Urbanization upon Danish Attitudes toward Freedom of Expression," 1971.

14. 80 Harvard Law Review 1641 (1967)

15. 39 George Washington Law Review 429 (1971)

16. 60 Columbia Law Review 1091 (1968); Reprinted in Haig Bosmajian, The Rhetoric of Nonverbal Communication (Scott Foresman, 1971), pp. 118-140.

17. Random House, 1970.

18. 67 Northwestern University Law Review 153 (1972)

19. Erznoznik v. Jacksonville, 43 U.S. Law Week 4809 (1975)